

UTAH AIR QUALITY BOARD MEETING
September 7, 2005

FINAL MINUTES

I. Call to Order.

John Veranth called the meeting to order at 1:35 p.m.

Board members present:

Nan Bunker	Wayne Samuelson	John Veranth
Jerry Grover	JoAnn Seghini	Ernest Wessman
Jim Horrocks	Don Sorensen	

Executive Secretary: Richard Sprott

II. Next Meeting.

October 5, 2005, and November 2, 2005.

It was announced that Jeff Utley, a former Board member had been killed in an accident.

- Jim Horrocks moved that the Board send a letter of appreciation for the time he had spent on the Board and the service that he had rendered. The letter would be sent to his immediate family. JoAnn Seghini seconded and the Board approved unanimously.

Rick Sprott suggested that the Division could compose a letter for Mr. Veranth's signature and let the Board review it before it was sent.

III. Minutes.

Upon Marcelle Shoop's request, there had been additional language added to the July minutes. Ernest Wessman asked if staff had met Ms. Shoop's requirements. Colleen Delaney had received an email from Ms. Shoop and she had agreed that the changes had addressed her concerns.

- Ernest Wessman requested that the record show that Marcelle Shoop had reviewed and concurred with the addition and Mr. Wessman moved that the July 6, 2005, minutes be approved. Wayne Samuelson seconded and the Board approved unanimously.
- JoAnn Seghini moved that the August 3, 2005, minutes be approved. Nan Bunker seconded and the Board approved unanimously.

IV. Resolution of IPP#3 Permit Petition by IPSC. Presented by: Christian Stephens.

Ernest Wessman recused himself from this action item.

Mr. Stephens, from the Attorney General's office, and Blaine Rawson, from the law firm of Holme, Roberts & Owen, IPP's representative, introduced themselves. Mr. Stephens reviewed that the Executive Secretary had issued an Approval Order to Intermountain Power on October 15, 2004. Intermountain Power appealed the Approval Order to the Air Quality Board on November 12, 2004. Negotiations took place between the Executive Secretary and Intermountain Power and the parties agreed to settle the contested matter by a Joint Stipulation. Pursuant to Utah Air rule R307-103-14(6) the parties are now asking to enter an Order of Approval for the Joint Stipulation and make it binding on the parties and stand as a resolution of the contested matter.

Regg Olsen, Permitting Branch Manager for the Division of Air Quality, introduced himself. Mr. Olsen noted that the Approval Order that was issued in October met all state and federal requirements. After reviewing the language agreed upon in the Joint Stipulation, the proposal meets the Best Available Control Technology (BACT) requirements. It should be noted that BACT is applicable at all times. EPA was satisfied that BACT limits would be met during start up and shut down, with the exception of opacity, and that the Division would be requiring Best Emission Control Practices (BECP). Staff approves the resolution and that it will protect the air quality standards.

Rick Sprott reported on discussions that he had with EPA Region VIII and senior management at the Office of Air Quality Planning and Standards in North Carolina. The important principle here is that BACT is applicable at all times. That is what EPA and the Division was interested in insuring both regionally and nationally. Once EPA became aware that BACT limits were actually met during start up and shut down, with the exception of opacity, and that the Division would be requiring Best Emission Control Practices (BECP), EPA was satisfied that would meet their needs. Staff feels good that this resolution protects the air quality standards.

Mr. Rawson, representing IPSC, noted that this had taken quite a bit of time and effort on everyone's part, including Region VIII, to make it acceptable. IPP is happy with the outcome and urges the Board to approve it today.

John Veranth noted that it was unusual that an Approval Order would come to the Board for a vote and asked for a comment on why it was that way.

Mr. Fred Nelson, from the Attorney General's office, replied that the Administrative Appeal that was filed had two parts to it. The Sierra Club filed an appeal of the permit at the same time IPP also filed a separate appeal to the permit. Once those appeals were filed, it placed the Board in an adjudicative process. At this point, it has been brought to the Board as a resolution of that judication. Because it was appealed to the Board, the Board is then in a position to resolve this issue with the proposed stipulations.

There were comments from the audience. Mr. Joey Caputo, a political science major requested that the Board allow the approval order (AO) to go out for public comment. Also, Tim Wagner, Nina Dougherty, Sean Phelan from the Sierra Club, and Kathy Van Dame from Wasatch Clean Air Coalition presented their comments. They also requested that the AO go out for public comment.

Mr. Phelan challenged that the Board never considered the Approval Order, never considered the permit application or modeling associated with that application, never considered the emission impacts in the notice of intent. It never considered the concerns of the public, the EPA, or the Park Service for that matter. If EPA feels that this is entirely appropriate and within the interpretation of the Clean Air Act and the regulation, then it would be easy to provide that to Board in the form of a written document.

Mr. Rawson noted that the Sierra Club had been denied standing by the Board to appeal this issue. The Sierra Club had been involved with the public comment process since 2004 and was trying to use this as a procedural mechanism that they were not allowed by law to do. He further stated that Mr. Sprott had reported on the EPA position and that the Sierra Club had been provided a copy over a week ago.

Mr. Stephens pointed out that a principle of American law provides that there has to be finality to a dispute. He further stated that IPP had submitted an NOI to the Executive Secretary and it had been through the public process. So the idea that this decision is being made in haste, and shielded from the public is a fallacy and is not true.

Mr. Grover asked if the plan meets and satisfies the specific requirement of the guidelines.

Mr. Sprott responded that the purpose of the plan or the function is to serve as a tool to make condition 23 or 24 the general duty condition enforceable. Staff inspectors would ensure that IPP was following those procedures when they went out. There are very stringent record-keeping requirements. In fact, this condition for start up and shut down is far more stringent than the original condition and probably more stringent than most permits around the country. If the Division feels there is a problem, they will sit down with the source and make changes.

Mr. Grover commented that one capacity of the Board is a legislative or rule making function. When the Board addresses the appeals, then it shifts to a quasi-judicial role that means it has to respect the rules that exist and follow them. The Board must act on information it has before it. A stipulation was presented that settled the matter for both parties. The Board needs to act.

Mr. Sorenson asked how long it takes to actually do start up and shut down.

Rand Crafts, Environmental Analyst for IPP, said that it varies from regular plant operation. At the beginning, it takes hundreds of hours in the starting year. During normal operation, there is a prediction of one outage a year. The start up would take between 72 –160 hours. Unplanned trips can take 24 – 72 hours each, which is a hot start. A cold start takes longer. He then commented that the start up and shut down was consistent with the Clean Air Act provisions. All start up and shut downs are a matter of public record and part of the process.

Mr. Veranth complimented the parties on trying to make a resolution.

- Jerry Grover moved that the Board approve this stipulation. Nan Bunker seconded it and the Board approved the motion. Voting for: Bunker, Grover, Horrocks, Samuelson, Seghini, and Sorensen. Voting against: Veranth. Recused: Wessman.

V. Propose for Public Comment: Amend R307-170, Continuous Emission Monitoring Program. Presented by: Bryce Bird.

Mr. Bird reported that R307-170 contains the Utah Continuous Emission Monitoring Program. Due to changes in the Continuous Emission Monitoring requirements for sources subject to the Clean Air Act Acid Rain Program, 40 CFR Part 75 now conflicts with Utah's Continuous Emission Monitoring Rule. The rule change was designed to address the conflicting language and to make some minor grammatical corrections. The staff recommends that the revision to R307-170 be proposed for public comment.

- Nan Bunker moved to propose for Public Comment to Amend R307-170, Continuous Emission Monitoring Program. Ernie Wessman seconded and the Board approved unanimously.

VI. Final Adoption: R307-101-2, Update Definition of Clearing Index. Presented by: Jan Miller.

Ms. Miller reported that a public hearing had been held and no one attended. Also, no comments had been received. Staff recommends that the Board approve the change in R307-101-2 and be adopted as proposed.

- Jerry Grover moved that the Board approve R307-101-2 and Nan Bunker seconded. The Board approved unanimously.

VII. Five-Year Reviews: R307-103, R307-110, R307- 165, R307-201, R307-205, R307-206, R307-302, R307-305, R307-307, R307-309, and R307-310. Presented by: Mat Carlile.

Mr. Carlile stated that all state agencies are required by the Utah Administrative Rulemaking Act to review each of their rules by the end of the fifth year. Because the statute defines "agency" as the state board or other entities authorized by statute to make rules, the responsibility to complete the review falls to the Air Quality Board. At the end of the review, the agency must file a notice with the Division of Administrative Rules indicating its intent to continue, amend, or repeal the rule. Nothing in the review process makes any change in the rule text; if the agency wishes to amend or repeal the rule, a separate action is required under the regular rulemaking procedures (public notice, public comment, and final Board adoption). If the agency does not file the form on time, the rule automatically expires.

At the request of the board, staff has begun the rule reviews in functional groups. Staff recommends that the Board approve the attached forms to be filed with the Division of Administrative Rules.

Mr. Wessman thanked the staff and expressed appreciation of their effort to cluster together the related rules.

- Jim Horrocks moved that the attached forms compiled of the Administrative rule for R307-103 Administrative Procedures; R307-110 General Requirements: State Implementation Plan; R307-165. Emission Testing; R307-201. Emission Standards: General Emission Standards; R307-205. Emission Standards: Fugitive Emissions and Fugitive Dust; R307-206. Emission Standards: Abrasive Blasting; R307-302. Davis, Salt Lake, Utah, Weber Counties: Residential Fireplace and Stoves; R307-305. Nonattainment and Maintenance Areas for PM10: Emission Standards; R307-307. Davis, Salt Lake, and Utah Counties: Road Salting and Sanding; R307-309. Nonattainment and Maintenance Areas for PM10: Fugitive Emissions and Fugitive Dust; R307-310. Salt Lake County: Trading of Emission Budgets for Transportation Conformity. Wayne Samuelson seconded and the Board approved unanimously.

VIII. Informational Items.

A. Decision of the Court of Appeals. Presented by: Fred Nelson.

Mr. Nelson, from the Attorney General's Office, reported that the Court of Appeals had denied a motion by the Sierra Club to stay the Board proceedings on the petition of the Sevier Power Plant air permit. The court denied the motion. The Court of Appeals also denied a request by the Sierra Club to supplement the record with additional documents that the Board had not revealed and considered appropriate for review. The Court of Appeals set a briefing schedule for Sierra Club's appeal of the Board's denial of standing for the IPSC and Sevier Power air permits. The Sierra Club brief will be reviewed the first part of October. The responses to that brief will be considered at the end of October or first part of November. At that point, the Court will set a time for oral argument and then make a decision.

B. PM Standard Modification Update. Presented by: Mat Carlile.

Mr. Carlile reviewed with the Board that the Clean Air Act requires the EPA to complete a thorough review of the National Ambient Air Quality Standards (NAAQS) at least every five years. The EPA is under court order to complete its review of the PM NAAQS by December 20, 2005, and have a final rule by September 27, 2006.

This review includes a review of the latest scientific and technical information about PM and EPA staff's assessment of the policy implications of this information. The Clean Air Scientific Advisory Committee (CASAC) then reviews the EPA staff assessment. CASAC also gives its recommendations to the Administrator. The CASAC was established to be an independent scientific advisory committee. Historically, the Administrator has adopted the recommendation of CASAC.

EPA staff developed two options that are both more stringent than the current standards. CASAC has recommended a new standard that is in between these two options.

Mr. Carlile noted that 13 out of 14 monitors would violate the new 24-hour standard recommended by the CASAC based on the last 3 years of data.

There could also be problems complying with the annual standard that CASAC is recommending.

The EPA staff also recommended replacing the current PM₁₀ standards with a new PM coarse standard. This new standard would look at particles between 2.5 and 10 micrometers in diameter. There will be two standards: 2.5 and below and 2.5 to PM10. The focus of this new standard is on coarse particles present in urban environments rather than just globally. This standard is similar to the PM10 standard and it does not appear that we will have a problem with it.

Mr. Grover asked what has happened over the last 5 years that would cause them to recommend the new standards.

Mr. Veranth commented that in his field of research, health studies have shown a correlation between adverse affects on some laboratory animals and in human populations.

Dr. Samuelson noted that there is no level of any of these things that are safe. One should recognize that most any standard is a compromise. The more stringent it becomes, the better off people will be.

Mr. Horrocks asked if there was any action that the state needed to do prior to EPA's final decision in September of 2006. Mr. Sprott noted that right now there is nothing that needs to done. At this point we don't know where it will come down.

C. NSR Reform Rule Update. Presented by: Colleen Delaney.

Ms. Delaney presented an update of where Utah is in the NSR reform process. About 2 and a half years ago, EPA adopted some significant changes to their national permitting programs for major sources. This included the PSD (Prevention of Significant Deterioration) and the non-attainment NSR (New Source Review) programs. The states were given three years to incorporate the revisions into their SIP. Staff has been working on this to present on January 2, 2006. There have been stakeholder meetings and drafted rules have been available on the web site for months.

There has been a court decision on appeals to that rule. On June 24 of this year, the D.C. Circuit Court of Appeals threw out some of the provisions of the NSR reform rule, but upheld the majority of what had been adopted.

There have been additional court cases that have been tied to some of the permitting requirements on the federal level. Things are uncertain in terms of how EPA is going to deal with these court decisions.

Until this is settled on the national level, staff feels that changes to the SIP should wait until there is more guidance from EPA. This means that the January 2, 2006 deadline will not be met. EPA may extend the deadline since this has slowed the process. There are some states that have already submitted their rules. EPA has approved part and not other portions.

Mr. Horrocks asked if staff should ask EPA for a formal extension?

Ms. Delaney responded that staff would wait a couple of months. If there has not been guidance from EPA, then that approach could be taken. EPA has three court decisions they are trying to deal with right now. Some of them conflict with each other and they are trying to sort this all out and come up with a process. Staff is hoping for guidance in the next couple of months on what EPA is planning to do.

D. Compliance. No questions.

E. HAPS. No questions.

John Veranth excused himself from the meeting and Ernie Wessman presided.

F. Monitoring. Presented by: Bob Dalley.

Mr. Dalley reviewed the graphs in the packet and noted that this was the “clean” time of year. He pointed out that fireworks caused the high PM2.5 values in July in Lindon and North Salt Lake occurred on July 4. August was a clean month for PM2.5. The 8-Hour Ozone chart showed numerous exceedences of the standard in July.

Meeting was adjourned at 3:30 p.m.